



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 19127968

Date: JAN. 19, 2022

**Motion on Administrative Appeals Office Decision**

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that he was individual of exceptional ability or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's subsequent appeal. The matter is again before us on a combined motion to reopen and motion to reconsider. On motion, the Petitioner submits a brief and additional evidence.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reopen.

**I. LAW**

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

**II. ANALYSIS**

As an initial matter, the review of any motion is narrowly limited to the basis for the prior adverse decision. 8 C.F.R. § 103.5(a)(1)(i). Accordingly, we examine any new facts and arguments to the extent that they pertain to our prior dismissal of the Petitioner's appeal.

The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence.

In denying the petition, the Director determined that the Petitioner had met the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B) and we agreed. On appeal, the Petitioner asserted that he also met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D). We informed the Petitioner that, because he did not address the remaining criteria, we considered them abandoned. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005). citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff’s claims were abandoned as he failed to raise them on appeal to the AAO). As a result, we limited our review to the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D), which requires “[e]vidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.”

In our prior decision, we discussed the deficiencies in the submitted documentation and explained that to satisfy this criterion, the evidence must show that the Petitioner has commanded a salary or remuneration for services that is indicative of his claimed exceptional ability relative to others working in the field, not to the United States generally. 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policymanual>. We ultimately concluded that the Petitioner had not demonstrated that his remuneration is a result of his exceptional ability, rather than the [redacted] standardized pay scale for his position and time in grade.<sup>1</sup>

On motion, the Petitioner generally alleges that because we did not find that the Petitioner met at least four of the six criteria, it was an “error of law.” However, the Petitioner does not address our conclusion that, because he only asserted that he met the remuneration criterion on appeal, the remaining criteria were considered abandoned.<sup>2</sup> Regardless, the Petitioner has not established that our decision was (1) based on an incorrect application of law or USCIS policy, and (2) incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The Petitioner also provides a new letter from the chief security advisor at [redacted] [redacted] and updated information concerning his total compensation. The letter indicates that:

[T]o be hired [ ] at even an entry level post, [a candidate] must possess outstanding credentials and have proven experience in the following areas: extensive police or military background with proven investigative skills and accomplishments; evidence of at least 10 years prior experience and accomplishments....[The] position is a very demanding and dangerous one and

<sup>1</sup> For example, as we explained, the information from [redacted] indicated that “[t]he level of pay for staff in the Professional and higher categories that are recruited internationally is set by reference to the highest paying national civil service” and that “[t]he base salary, which is determined by the grade of the post specified in the job opening and the existence of any dependents, is the same throughout [redacted] system.” We also noted that the Petitioner provided information regarding other position categories, but not for his own.

<sup>2</sup> As the remaining criteria were abandoned, we will limit our discussion to the evidence submitted in support of the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D).

the high compensation he receives is definitely reflective of the demands of this job, but [also] of his abilities to do the job.

None of the submitted evidence, however, sufficiently establishes that the Petitioner's remuneration is based on his exceptional ability instead of his employer's standardized pay scale. Without more, we cannot conclude that the Petitioner has met this criterion.

### III. CONCLUSION

The Petitioner has not submitted new evidence sufficient to establish that he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D). Therefore, he has not met the requirements for a motion to reopen. Furthermore, he has not established that our prior decision was based on an incorrect application of law or policy. As a result, he has not met the requirements for a motion to reconsider.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.